

108629

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

Spent
Pract.

9198

FILE: B-194015

DATE: February 16, 1979

MATTER OF: Bowman Enterprises, Inc.

DIGEST:

1. Allegations that low bidder lacks experience and professional qualifications to perform and cannot meet delivery schedule involve bidder's responsibility, affirmative determination of which is not reviewed by GAO except in cases of fraud or misapplication of definitive responsibility criteria set forth in solicitation.
2. It is not GAO practice under bid protest function to conduct investigations to establish validity of protester's speculative statements. Burden is on protester to substantiate its case.
3. No legal basis exists to preclude contract award merely because low bidder submitted below cost bid.

Bowman Enterprises, Inc. (Bowman) protests contract awards to Copier and Control Systems (Copier), the low bidder, under solicitation Nos. N00189-79-B-0025 and N00189-79-B-0026, issued by the Naval Supply Center, Norfolk, Virginia, and Cherry Point, North Carolina. Bowman, the incumbent contractor, asserts Copier's bid is "nonresponsive" because it is unreasonably low and because Copier lacks the experience, managerial, and professional qualifications to perform and meet contract requirements.

Although Bowman characterizes Copier's alleged deficiencies as relating to the responsiveness of that firm's bids, the allegations relate to Copier's responsibility. The determination of a bidder's ability to perform involves responsibility, while responsiveness

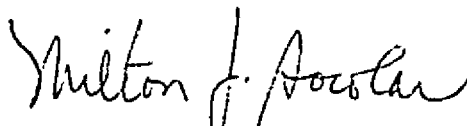
concerns the promise of a bidder to perform in accordance with the invitation. Thus a bid is "responsive" if, as submitted, it is an offer to perform the exact thing called for in the solicitation, without exception. John Grace & Co., Inc., B-190439, February 15, 1978, 78-1 CPD 131. There is no suggestion that Copier took exception to solicitation requirements and therefore we have no basis for viewing its bids as nonresponsive.

Since this protest is based solely on the question of Copier's responsibility, we point out that this Office does not review protests of affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception is applicable here.

In addition, it is not our practice to conduct investigations such as the ones Bowman requests here, to establish whether a protester's speculative statements are valid. Rather, the protester has the affirmative burden to prove its case. M & H Mfg. Co., Inc., B-191950, August 18, 1978, 78-2 CPD 129.

Finally, if a bidder has been found to be otherwise responsible, the fact that it may have submitted a below cost bid does not constitute a legal basis for precluding or disturbing a contract award. Columbia Loose-Leaf Corporation, B-193659, January 23, 1979, 79-1 CPD ____.

The protest is dismissed.



Milton J. Socolar
General Counsel